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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

17 Cr. 330 (AKH)

5 DAVID SHALAM,

6 Defendant.

7 -----x

8 September 8, 2017
9 12:00 p.m.

10 Before:

11 HON. ALVIN K. HELLERSTEIN,

12 District Judge

13
14 APPEARANCES

15 JOON H. KIM

Acting United States Attorney for the
16 Southern District of New York

17 BY: ALISON G. MOE

Assistant United States Attorney

18 BRAFMAN & ASSOCIATES, P.C.

Attorney for Defendant

19 BY: BENJAMIN BRAFMAN

JACOB KAPLAN

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1 (Case called)

2 THE DEPUTY CLERK: Counsel, please state your
3 appearances for the record.

4 MS. MOE: Good morning, your Honor. Allison Moe for
5 the government.

6 THE COURT: Good morning.

7 MR. BRAFMAN: Good morning, your Honor. Benjamin
8 Brafman and Jacob Kaplan for Mr. Shalam who is present in the
9 courtroom.

10 THE COURT: Good morning, gentlemen. Good morning,
11 Mr. Shalam.

12 What are we doing today, Ms. Moe?

13 MS. MOE: Your Honor, we last appeared on this case on
14 May 25th, at which time the defendant waived indictment and was
15 arraigned on a four-count felony information. At that time we
16 asked the Court to adjourn the case until today's date so that
17 the parties could discuss a possible resolution of that matter.
18 So far we have not made much headway in that regard, however I
19 am still confident that we could possibly reach resolution in
20 this case and we would like to continue those discussions.

21 THE COURT: Who is negotiating harder, you or
22 Mr. Brafman?

23 MR. BRAFMAN: Your Honor, if I may, it is a question
24 of us having -- we are both negotiating very hard with respect
25 to our different positions. It isn't merely a matter of

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1 negotiation. We have used the time your Honor graciously gave
2 us to have Mr. Shalam evaluated by a very responsible,
3 well-respected psychiatrist so that we could understand what
4 drove him to become involved in these serious offenses given
5 the fact that he has an unblemished prior criminal record and
6 comes from a very good family and is otherwise responsible
7 citizen. The evaluation has been done. We are expecting a
8 final report sometime next week. It was delayed to some degree
9 because it is difficult to do it in the confines of the MDC in
10 terms of scheduling through no fault of the Bureau of Prisons,
11 just the Doctor required more time than it would have taken had
12 it been done at his office. But, the report appears in draft,
13 he believes he will have a final report by next week.

14 We have spoken with Ms. Moe in terms of presenting a
15 mitigation package to the United States Attorney's office which
16 would include, obviously, the report as the centerpiece in an
17 effort to persuade them to allow for disposition that does not
18 include the highest mandatory minimum that's currently charged
19 in the information. We are not there yet. We spoke, I think,
20 yesterday or the day before, and Ms. Moe explained the
21 procedure that once we submit the report to her, she will
22 review it, submit her own recommendation, then goes before a
23 mitigation committee, if you will, we would have a right to
24 appear there as well, assuming they don't accept our proposal
25 and at some point we would report back to the Court, we either

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1 do or do not have an agreement.

2 THE COURT: How about a three-month adjournment?

3 MR. BRAFMAN: I think that would give us certainly
4 enough time to get this done.

5 THE COURT: Ms. Moe.

6 MR. BRAFMAN: And if we get it done sooner we would
7 advise the Court and you could possibly advance the case.

8 THE COURT: Should I give you 60 days' time?

9 MR. BRAFMAN: I am told that the process takes a month
10 once we get the report to the United States Attorney's office.
11 I don't know whether I will have to go higher in the office or
12 be allowed to go higher in the office than the mitigation
13 committee, but I believe 60 or 90 days would give us enough
14 time to get this done correctly, sir.

15 THE COURT: How about November 17 at 11:00?

16 MS. MOE: Thank you, your Honor. That works well.

17 MR. BRAFMAN: Yes. At 11:00, your Honor.

18 THE COURT: Yes.

19 MR. BRAFMAN: Your Honor, I have a hearing that date
20 that is scheduled for 9:00, I don't know whether it is a half
21 hour hearing or a two-hour hearing.

22 THE COURT: In this court?

23 MR. BRAFMAN: No, it is in the state court and you
24 know you take precedence but it is hard to explain that
25 sometimes over there.

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1 THE COURT: No, I wouldn't bother.

2 MR. BRAFMAN: If you do it later in the morning it
3 will be fine.

4 THE COURT: I am flexible for that you come over when
5 you come over.

6 MR. BRAFMAN: Okay.

7 THE COURT: Let us know, call us.

8 MR. BRAFMAN: I think if I am done sooner --

9 THE COURT: We will set it for 11:00 but come when you
10 have the time.

11 MR. BRAFMAN: Thank you, sir.

12 THE COURT: And motion to exclude time, Ms. Moe?

13 MR. BRAFMAN: Yes.

14 MS. MOE: Yes, your Honor.

15 THE COURT: For the reasons outlined before?

16 MS. MOE: That's correct, your Honor; in order to
17 permit the parties to continue discussing resolution of this
18 matter.

19 MR. BRAFMAN: That's right.

20 THE COURT: Without objection, so ordered.

21 MR. BRAFMAN: Thank you, sir.

22 MS. MOE: Thank you, your Honor.

23 THE COURT: You're welcome.

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